

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

FC 2007-053939

12/30/2008

HON. JOHN REA

CLERK OF THE COURT
M. MINKOW
Deputy

IN RE THE MARRIAGE OF
ANDREA D MESSENGER

MARY C MCDONALD

AND

JIMMY D MESSENGER

MARTIN F KEIL JR.

DR JOHN A MORAN
7500 E MCDONALD STE 400A
SCOTTSDALE AZ 85250

APPOINTMENT OF A PRIVATE CUSTODY EVALUATOR

IT IS ORDERED appointing the following evaluator to examine the parties and their minor child(ren):

Dr. John Moran
7500 E. McDonald, Ste. 400A
Scottsdale, AZ 85250
Phone: 480-946-0801

IT IS FURTHER ORDERED that the examination shall be conducted on the following basis:

1. Scope. The evaluator shall conduct a full examination and evaluation sufficient for the evaluator to render a written report and opinions as to the current custody and access/visitation plan which would be in the best interests of the parties minor child(ren) after considering all relevant factors including those set forth in A.R.S. §25-403.

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The evaluator may make any other recommendations he or she determines the Court should consider to promote the physical, mental, moral or emotional health of the child(ren). The evaluator may also assist the parties to resolve their dispute amicably if possible.

2. Timely Written Report. The evaluator shall prepare a written report not later than 14 days prior to the next scheduled hearing. The report shall be delivered to the Court and counsel, or the parties if pro se, unless the evaluator asserts extraordinary circumstances, such as imminent life threat or the potential for serious harm to a person related to the case. In that event, the Court shall make a ruling regarding dissemination of the report. The acceptance of this appointment by the evaluator indicates a capability of completing a written report in a timely manner and the ability to appear and testify in court upon reasonable notice.

3. Initial Contact. Counsel for both parties, or the parties if pro se, shall make the initial contact with the evaluator through a joint conference or conference call within 10 days of receipt of this order and thereafter shall arrange for the appointments of the persons to be examined. The initial conference with the evaluator shall be used to summarize the issues present in this case, to arrange for the initial appointments of the persons the evaluator wishes to examine, and to allow the evaluator to request information he or she believes to be pertinent.

4. Authority of Evaluator/Cooperation By Parties/Waiver of Confidentiality. The evaluator shall have the following authority with regard to the minor child(ren) and family members:

a. The evaluator shall serve as an expert for the court in order to provide data and opinions relevant to the care of, custody of and access to the minor child in this case pursuant to applicable Arizona statutes and case law.

b. The evaluator shall have reasonable access to the child(ren) and family members with reasonable notice; and shall have reasonable notice of any and all judicial proceedings including requests for any examination affecting the child(ren) and shall be provided copies of all minute entries, orders and pleadings filed in this case.

c. The evaluator shall also have access to:

- i. All therapists of the child(ren) and parties;
- ii. All school and medical records of the child(ren) and parties;
- iii. Any and all psychological testing or evaluations performed on the child(ren) or the parties;
- iv. Any and all teachers/child care providers for the child(ren).

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d. At the request of the evaluator, each party shall execute any and all releases or consents necessary to authorize the evaluator's access to the information described herein. No other clinicians (i.e., therapists, psychologists, social workers etc.) are to work on this case during the course of the evaluation without the consent or authorization of the evaluator, unless otherwise authorized by court order.

e. The parties are informed that the Court is the identified client of the evaluator in this case. The evaluator serves the Court in this case; therefore, neither the parties nor their child(ren) are patients of the evaluator. There is no confidentiality relating to the parties' communications with or to the evaluator or concerning the evaluator's activities or recommendations. The evaluator may engage in written or verbal communication with any person he or she perceives capable of providing information relevant to the care and welfare of the child.

f. The evaluator may request that the parties and/or child(ren) participate in adjunct services, to be provided by third parties, including but not limited to physical or psychological examinations, assessment, psychotherapy, co-parenting work, or alcohol and drug monitoring/testing. The Court shall allocate between the parties the cost of any adjunct service.

g. The evaluator shall be promptly provided all records, reports, and documents requested and shall receive the cooperation of all parties and counsel involved to ensure that the report is submitted by the date requested. This Order shall act as a release by the parties of all information requested by the evaluator and shall further obligate the parties for any costs associated with the production of those records to the evaluator. Any such costs shall be paid promptly.

5. No Ex-Parte Contact. The parties and counsel shall not have substantive ex-parte discussions with the evaluator, but shall conduct all communication through conference calls or conferences, unless agreed upon otherwise by all parties and counsel. Copies of any documentation provided by counsel or the parties to the evaluator shall concurrently be sent by the providing person to the other side. Copies shall be sent to counsel if the other side is represented by counsel. The evaluator may have ex-parte contact with the Court regarding scheduling matters.

6. Fees. The evaluator agrees to conduct the custody evaluation on a pro bono basis.

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7. Evidence. The written report of the evaluator may be received in evidence without the necessity of any foundation and without any objection to hearsay statements contained therein or any other objection.

8. Testimony. Each party shall have the right to call the evaluator as a witness. If only one party believes that the evaluator's live testimony is necessary in addition to the written report, that party shall initially be responsible for 100% of the costs incurred in connection with the evaluator testifying at the court hearing, subject to reallocation by the court if appropriate.

9. Immunity. The evaluator acts as a quasi-judicial officer in his or her capacity pursuant to this Order, and as such, the evaluator has limited immunity consistent with the Arizona case law applicable to quasi-judicial officers of the Court as to all actions undertaken pursuant to the Court appointment and this Order. Any alleged impropriety or unethical conduct by the evaluator shall be brought to the attention of the Court in writing.

IT IS FURTHER ORDERED signing this minute entry as a formal order of this Court pursuant to Rule 81, Arizona Rules of Family Law Procedure.

/s/ John Rea

JOHN REA
JUDGE OF THE SUPERIOR COURT

All parties representing themselves must keep the Court updated with address changes. A form may be downloaded at: <http://www.superiorcourt.maricopa.gov/SuperiorCourt/Self-ServiceCenter>.